EUROPEAN UNION

DELEGATION OF THE EUROPEAN COMMISSION

July 27, 1999

Ms. Magalie Roman Salas
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20054

Re: ET Docket No 99-81

Dear Ms. Salas,

Enclosed please find the comments submitted by Delegation of the European Commission on behalf of the European Community to the US Department of State in the above-referenced proceeding. The Delegation requests that these comments be part of the proceedings in this matter and put in the public record.

Sincerely,

Gerard de Graaf
First Secretary, Trade Section

2300 M Street NW Washington, DC 20037-1434 Telephone: (202) 862-9500 / Fax: (202) 429-1766

EUROPEAN UNION
DELEGATION OF THE EUROPEAN COMMISSION

REPLY COMMENTS BY THE EUROPEAN COMMUNITY TO THE FCC NPRM IN THE MATTER OF THE ESTABLISHMENT OF POLICIES AND SERVICES RULES FOR THE MOBILE SATELLITE SERVICE IN THE 2 GHZ BAND (IB DOCKET NO. 99-81)

1. The Delegation of the European Commission presents its compliments to the Department of State and has the honour to refer to the Notice of Proposed Rule-making (NPRM) adopted by the Federal Communications Commission (FCC) on March 18, 1999 in the matter of the Establishment of Policies and Services Rules for the Mobile Satellite Service in the 2 GHz band (IB Docket No. 99-81).

2. The European Community (EC) welcomes the opportunity to comment offered by this FCC NPRM. The EC attaches considerable importance to the policies and rules being established by the FCC under this proceeding, due to the innovative and global character of these mobile satellite services. Another reason justifying the EC interest in this NPRM consists in the fact that, as recognised by the FCC, "... the 2GHz MSS is the first processing round in which we have received letters of intent to serve the U.S. market with non-U.S. licensed MSS systems. We adopted the "letter of intent" process in our *DISCO II* Order, to implement the U.S. commitments in the World Trade Organisation (WTO) Agreement on Basic Telecommunications (WTO Basic Telecom Agreement)."[1]. The FCC also stated that "This proceeding represents the Commission's first opportunity to implement the *DISCO II* Order's provisions regarding letters of intent and thus, to further the promise of the WTO Basic Telecom Agreement through concrete and comprehensive MSS authorisation initiatives."[2].

3. The EC notes that one of the main aims behind the successful conclusion of the negotiations of the WTO Basic Telecom Agreement in 1997 was to facilitate the implementation of global satellite systems (such as MSS) throughout the world. Both the United States, and the EC and its Member States have undertaken market access commitments for global satellite systems without any general reservation. As explained below, the EC and its Member States are respecting their WTO commitments by authorising the entry of U.S.-licensed MSS systems in their markets in a non-discriminatory and expeditious manner. The EC hopes that the U.S. will also respect its WTO commitments by authorising the entry of European-licensed systems under similar conditions.

4. In this regard, the EC considers that any future 2 GHz MSS rules should recognise that there are some systems which are ready to enter the market earlier than others, as well as that there are second generation or expansion systems competing against first generation systems. In particular, ICO is planning to begin its commercial service in the third quarter of 2000 and the launch of its first satellite is now imminent. Of the nine 2 GHz MSS applicants, no other applicant has any plans to offer commercial service in the near term. Furthermore, as the FCC noted, "four of the 2 GHz MSS applicants are Big LEO licensees proposing essentially second generation or expansion systems"[3]. The delay of the FCC in taking decisions about the entry of MSS systems in the 2 GHz band has created a situation in which MSS systems in very different stages of development are disputing a

---

1 NPRM at ¶72.

2 NPRM at ¶72.

3 NPRM at ¶94.

limited amount of available frequency spectrum. This situation discriminates de facto against ICO and in favour of its US-based Big LEO competitors already licensed in the 1.6/2.4 GHz bands. In fact, while ICO has been trying, for several years now, to get access to the US market, its main US-based competitors have already been authorised in an expeditious manner to operate their first generation systems both in the US and in Europe in these other frequency bands without facing any significant burden (such as relocation costs or auctions).

5. Thus the EC expects that the FCC will recognise these different levels of development of the systems of the 2 GHz MSS applicants, and expects that the FCC will adopt policies and rules which facilitate market entry for those systems which are ready to operate earlier (such as ICO). This approach would show that the United States respects its commitments under the WTO Basic Telecom Agreement. This would also benefit U.S. consumers by giving them more choices through increased MSS competition. This would be consistent with the goals mentioned by the FCC for its NPRM: "promoting competition by creating opportunities for new entrants, expediting the authorisation process, and providing incentives for system operators to commence service to the public promptly using state-of-the-art technology."[4].

6. In this context, the EC welcomes the intention of the FCC to "address ICO's primary concern of expedition in authorisation systems by proposing spectrum assignment options designed to facilitate rapid initiation of 2 GHz MSS service."[5]. We hope therefore that the FCC gives due attention to the merits of non-rigid and balanced solutions which in practice facilitate rapid market entry of 2 GHz MSS systems while providing for entry of other systems at a later stage when they are ready to do so, such as the solution proposed by ICO. The concern expressed by some commenters that allowing early entry for some systems could give them a strategic advantage doesn't take into account the fact that, as mentioned above, four of the nine 2 GHz MSS applicants, which are competitors of ICO, have already received licences in other frequency bands. Furthermore, there are safeguards, such as those proposed by ICO, to address the concern expressed by some commenters that earlier 2 GHz MSS entrants may delay introduction of additional competition by negotiating in bad faith with later entrant systems[6].

7. The EC hopes, therefore, that the FCC will discard those NPRM options which would cause any delay in market entry for applicants which are ready to enter earlier by, for example, requiring spectrum planning and coordination negotiations with other applicants before initiation of 2 GHz MSS service, as this could encourage some later entrants to delay conclusion of such negotiations. Furthermore, even assuming that all applicants would be willing to negotiate in good faith, some of them could have difficulties in doing so due to the premature stage of design of their systems. In addition, any solution which would assign spectrum equally, both to systems that are prepared to offer service and to systems that will not be ready for several years or may never be able to operate, would lead to an inefficient use of the available spectrum, and would require successive adjustments to accommodate unavoidable changes in the design of later systems. These solutions would delay the benefit of competition for U.S. consumers and could be seen as barriers to market entry by those systems which are ready to enter earlier such as ICO.

---

[4] NPRM at ¶1.

[5] NPRM at ¶12.

[6] E.g. guaranteeing access to a minimum amount of spectrum and setting up a mechanism whereby the FCC will intervene when later entrants are concerned about the pace of their negotiations with earlier 2 GHz MSS entrants.

8. The EC also hopes that the new 2 GHz MSS applicants will face regulatory requirements similar to those imposed by the FCC on the Big LEO licensees. This would be consistent with the recognition by the FCC that "many of the issues raised by the 2 GHz MSS system proposals are similar to those the Commission addressed in the Big LEO service rules proceeding. The issues are similar because the mobile satellite services proposed are essentially the same as those provided by the Big LEOs (i.e., voice, data, and fax via MSS), and because the proposed 2 GHz MSS system designs are similar to those used by the big LEOs (i.e., CDMA and TDMA system architectures)."[7]. In this context, the FCC also noted, regarding the possible imposition of a requirement for service to unserved communities, that "we have not adopted such policies or rules for Big LEO licensees or other MSS providers. We seek comment on how this fact, and our commitment to competitive neutrality in our rules, could affect whether or not we should pursue, in a separate proceeding, adopting similar policies or rules for unserved areas for Big LEO and other satellite licensees."[8]. Adopting different and more strict rules for the new 2 GHz MSS applicants would discriminate against them and in favour of the Big LEO licensees which already have the competitive advantage of having obtained their licenses earlier without facing any significant burden (e.g. in terms of relocation).

9. In this context, the EC considers that the FCC should refrain from imposing requirements on 2GHz MSS applicants to provide E911 service, to serve unserved communities, or to incur any other regulatory obligation that would put the new non-US licensed 2 GHz MSS entrants at a further competitive disadvantage comparing to their Big LEO US-based licensees. By doing otherwise, the U.S. would presumably be violating its WTO commitments.

10. The EC believes that the decisions taken in the United States (as well as those taken in Europe) for these innovative global satellite systems are being scrutinised in the rest of the world. We thus have an increased responsibility to facilitate the market entry of these systems. If, instead, measures are taken which erect barriers to, rather than facilitate, market entry of these global systems, then there is the risk that such measures will also be followed by other countries, which may see in those measures an opportunity to derive additional revenues through the regulation of these new technologies. For this reason, we are concerned about the possibility, suggested in the NPRM, of auctions of 2 GHz spectrum for global MSS systems. As we have already indicated in previous comments, we are also concerned in this context about the imposition envisaged by the FCC of an obligation on 2 GHz MSS applicants to pay the costs for the relocation of incumbent services in the 2 GHz band. We recall that these burdens would affect ICO and Inmarsat but have not been faced by their previously licensed US-based Big LEO competitors[9], thus putting the European-based companies at a competitive disadvantage. This would also constitute presumably a violation of the US obligations under the WTO. We are also worried that these practices could be extended not only to other countries but also to other global satellite services. If this were to happen, it would risk slowing down future growth in the satellite industry.

11. The EC is also concerned about the possibility raised by the FCC that "designations of spectrum for non-U.S. licensed systems be conditioned in some manner on successful coordination

---

[7] NPRM at ¶13.

[8] NPRM at ¶95.

[9] These burdens would only apply to the second-generation or extension systems that the Big LEOs plan to implement using the 2 GHz band.

internationally"[10]. The EC will not accept any such condition since it would delay entry of non-U.S. licensed systems into the U.S. market. We note in this regard that the decision of the FCC in 1994, of allocating domestically to PCS portions of the spectrum identified in 1992 by the ITU for 2 GHz MSS, aggravated the present difficulties for international coordination. In this context, the EC welcomes the FCC's recognition that "Further compatibility of U.S. and European plans could benefit the public by speeding rapid implementation of these services."[11]. This would be a constructive approach, and would not undermine market entry by non-U.S. licensed 2 GHz MSS operators.

12.In its NPRM, the FCC also invites comment on how any U.S. band approach could achieve compatibility with the spectrum planning and satellite system licensing process that already has occurred in other countries[12]. The attached note provides information on the situation in Europe. It will also provide for clarification of inaccurate statements made by some commentors on the European situation. It is important to note, when assessing the mechanisms established in Europe, that *the first and most important point* of distinction from the situation in the U.S. is the fact that the CEPT proceeded to pave the way for system applicants with regard to the 1.6/2.4 band and the 1.9/2.1 band in parallel, and on the same footing. This was done in recognition of the fact that the various applicant systems would seek to essentially offer similar if not identical services to customers. The approach appears to be in stark contrast to the situation in the U.S. where service rules for the former band were established several years ahead of any decision being taken on the latter, and where the discussion on the 2 GHz MSS service rules has been overshadowed by the relocation cost issue and the emerging technologies policy developed by the FCC.

13.Finally, the EC is also concerned about the impact that recent legislative activity in the U.S. Congress may have on the European-based applicants to 2 GHz MSS (i.e. ICO and Inmarsat)[13]. These concerns relate to the provisions of *DISCO II* relating to privatised intergovernmental satellite organisations (IGOs) affiliates or successors, which are being codified in this bill. The EC reaffirms its concerns about these provisions, already expressed on a number of occasions[14]. Our concerns have been further aggravated by the definition provided in the bill for 'IGO affiliate', i.e. "any entity in which an IGO owns *or has owned* an equity interest of 10 percent or more" (italics added). This definition is completely unacceptable, as it would mean in practice that ICO, for instance, would be considered for the purposes of the bill as an IGO affiliate indefinitely, despite the fact that it has been a fully privatised company for several years. Our concerns also apply to the treatment of Inmarsat, which since last April has been a private company[15]. The EC reaffirms that the United States has undertaken broad market access commitments under the WTO Basic Telecom Agreement, including for global satellite services. The EC will be attentive and reserves its right to use all available means to readdress any actions taken by the United States which go against the commitments that it undertook under the WTO Basic Telecom Agreement and which may affect European-based or European-owned companies.

---

[10] NPRM at ¶111

[11] NPRM at ¶111.

[12] NPRM at ¶ 111

[13] I.e. the bill entitled 'Open-market Reorganisation for the Betterment of International Telecommunications (ORBIT) Act' (S. 376), also know as the Burns bill, passed by the U.S. Senate on July 1, 1999.

[14] E.g. in the reply comments of the EC and its Member States of September 1997 and in letters to the FCC.

[15] The EC also notes that since Inmarsat is now a private company, it would be inappropriate to consider ICO as an affiliate of an IGO.

ANNEX

INFORMATION ON THE SITUATION IN EUROPE FOR LICENSING OF MSS SYSTEMS

1. In Europe, the co-ordinated introduction of satellite systems such as those under consideration in the present NPRM has been initiated by the Council and European Parliament Decision on S-PCS[1] (the "S-PCS Decision") which aims at facilitating the rapid introduction of compatible satellite personal communications services in the European Community through the harmonisation of frequency bands and usage conditions attached to general authorisations as well as to remove remaining barriers to the free movement of terminal equipment. The creation of conditions for the harmonised introduction of S-PCS services throughout the EU, and beyond, is to be achieved by way of mandates to the CEPT[2]. One of the main arguments of this approach was the pan-European coverage that CEPT could provide.

2. Based on the S-PCS Decision, the Commission mandated the CEPT to adopt appropriate measures concerning (i) the harmonised use of frequencies, (ii) the harmonised conditions attached to general authorisations, (iii) the free movement of terminal equipment in the Community, and (iv) harmonised authorisation procedures for upcoming S-PCS systems.

3. CEPT responded by adopting four decisions[3] leading, *inter alia*, to the establishment of a Milestone Review Committee (MRC). The MRC monitors the compliance of applicant systems with a set of established milestones and notifies administrations accordingly. As soon as an applicant system has provided evidence of the first successful satellite launch and in-orbit deployment, administrations may proceed with provisional frequency assignments and the authorisation procedures[4].

4. The primary motive behind this mechanism was the desire to develop the ability to distinguish, in an open and transparent manner, real commercial propositions from 'paper' satellite systems. It has been in operation since autumn 1997 and generally been found to be rather helpful. The MRC has dealt in a speedy and effective way with its tasks so far, i.e. the scrutiny of milestones with respect to several applicant systems, both in the 1.6/2.4 band and the 1.9/2.1 band.

5. During the process, all CEPT administrations had been asked by ERC to identify candidate systems for the bands in question. Since it was recognised that S-PCS using CDMA and TDMA cannot

---

[1] Decision 710/97/EC of 24 March 1997, O.J. L 105/4 of 23.4.1997.

[2] Conférence Européenne des Postes et Télécommunications, composed by the administrations of 43 European countries.

[3] European Committee for Telecommunications Regulatory Affairs (ECTRA) Decision of 3.7.1997 on harmonisation of authorisation conditions and co-ordination of procedures in the field of S-PCS in Europe, operating within the 1.6/2.4 and 1.9/2.1 bands (ECTRA Dec.(97)02 ; ERC Dec. of 30.6.1997 on the harmonised use of spectrum for S-PCS operating within the 1.6/2.4 and 1.9/2.1 bands (ERC Dec.(97)03) ; ERC Dec. of 30.6.1997 on the Transitional Arrangements for the Fixed Service and Mobile Satellite Service in the 1.9/2.1 band in order to facilitate the harmonised introduction and development of S-PCS (ERC Dec.(97)04) ; and ERC Dec. of 30.6.1997 on free circulation, use and licensing of mobile earth stations of S-PCS (ERC Dec.(97)05).

[4] European Radiocommunications Committee (ERC) Decision (97)03 specifies (decides 6) that ... "for an S-PCS system which meets all milestones up to and including milestone 6 [...], and which becomes operational and ready to provide commercial service within the CEPT prior to 1 January 2001, its MES [i.e. Mobile Earth Stations] may operate on a provisional basis, subject to national authorisation in the relevant administration which may be conditional on the outcome of frequency co-ordination with other services in that country, [...]." (emphasis added).

share the same frequency band, both types of systems were to be accommodated in different parts of the respective bands. A total of 13 systems were notified, and minimum frequency requirements were identified by the respective administrations (all subject to further change if necessary). In the 1.6/2.4 band, there were both TDMA and CDMA candidates. Therefore this band was provisionally split into a TDMA and a CDMA half. In the 1.9/2.1 band, though, there were only TDMA, but no CDMA system applicants. However, it could not be excluded that other (TDMA or CDMA) systems would appear at a later stage. Therefore, it was decided to designate a portion of this band provisionally to TDMA systems, and to leave the other half of the band "to be decided". In other words, the upper half of the "2GHz band"(1995-2010; 2185-2200) has been provisionally earmarked for TDMA systems but not assigned to any system in particular, while the lower half (1980-1995; 2170-2185) is still "to be decided". It is important to note that, under the terms of the relevant ERC decision (ERC Dec. (97) 03), the list of systems can be modified, or augmented, at any time.

6. Both in the 1.6/2.4 and the 1.9/2.1 bands, the boundaries between TDMA and CDMA technologies, or between 'upper' and 'lower half', are subject to review, and provisional until 1 January 2001 at which stage the MRC would convene to make a finding about all those systems which have, by that time, completed all milestones including a first successful launch and in-orbit deployment. Only then, final spectrum assignments are to be made by administrations. In the event that there were to be more systems than spectrum available, the MRC would be called upon to elaborate a recommendation on how to accommodate the applicant systems in an equitable manner. Again, the relevant ERC and ECTRA decisions have been made subject to a review after two years, i.e. in 1999.